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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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June 11, 2001

Captain Frank Merriman
Los Angeles County Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Los Angeles, California 90040

Dear Captain Merriman:

Re: J.S.I.D. File #: 100-8809/00-0729
L.A.S.D. File #: 000-24909-2170-055

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 31, 2000, non-fatal shooting of Sergio Ruiz, age 23, by Los Angeles County Sheriff's Deputy Noe Garcia. We have concluded that Deputy Garcia acted lawfully in self-defense.

INVESTIGATION

The District Attorney's Command Center was notified of the shooting on December 31, 2000, at 9:45 p.m. Deputy District Attorney Hector Guzman and District Attorney Senior Investigator [redacted] responded to the scene of the shooting where we were given a briefing and provided a "walk-through" by Lieutenant Larry Lincoln of the Los Angeles County Sheriff's Department, Homicide Bureau.

The following analysis is based upon reports prepared by the Los Angeles County Sheriff's Department totaling 81 pages, presented to this office on March 20, 2001, an examination of 51 photographs that relate to the incident, and a joint investigation conducted by the Sheriff's Department and this office.

FACTUAL SUMMARY

On December 31, 2000, at approximately 9:07 p.m., Los Angeles County Sheriff's Department uniformed deputies responded to a shots fired call in the area of Hooper Street and East 58th Drive, Los Angeles. When Deputies Noe Garcia and John Perez arrived in the area they heard gunshots on 58th Drive to the west of Hooper Avenue. Garcia drove his marked patrol car west on 58th Drive in an attempt to locate the origin of the gunshots. Approximately mid block on 58th

Criminal Courts Building
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Los Angeles, CA 90012-3210
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Drive the deputies saw Sergio Ruiz walking along the south side of the street. No one else was on the street. The deputies believed Ruiz was the person responsible for the gunshots. As they drove toward Ruiz, he looked in their direction with a startled expression on his face. According to Garcia, Ruiz crouched down in a "combat position", put his left hand to his waistband, then turned quickly and ran toward a sliding gate. The sliding gate was part of a fence around the business located at 1212 East 58th Drive. Garcia stopped his vehicle next to Ruiz who was fumbling with something at the gate. Ruiz opened the gate and ran into the yard area of the business. Garcia stepped out of the patrol car and followed Ruiz into the yard. As Garcia followed, Ruiz turned quickly toward him. Ruiz was holding an object which Garcia believed was a weapon. Fearing for his life, Garcia fired several rounds from his gun at Ruiz, striking him several times. Ruiz fell to the ground and was subsequently treated by paramedics and transferred to the hospital.

No weapon was found at the location. However, an object six to eight inches long and three to four inches wide was found near Ruiz. The object contained approximately 380.6 grams of methamphetamine and was wrapped in duct tape.[1]

Deputy Noe Garcia told investigators that when he saw Ruiz crouch down in a "combat position" and put his left hand to his waistband, he believed Ruiz was the person responsible for the gunshots he had just heard and believed that Ruiz was armed with a handgun. When Ruiz opened the gate and ran into the lot, Garcia got out of his car and began to pursue Ruiz while continuously yelling, "Stop, stop. Put your hands up." Instead of complying, Ruiz suddenly spun around facing Garcia. Garcia could see that Ruiz was holding something in his hands and that both hands were together in front of his body as if holding a gun. Garcia described Ruiz's body position as being in a "combat" style crouch. Garcia believed he was about to be shot and fearing for his life he fired several rounds from his gun at Ruiz. Ruiz went down on his stomach, rolled onto his left side while facing Garcia, and appeared to be bringing his hands together toward Garcia. Fearing that Ruiz was still armed and dangerous, Garcia fired two more rounds and maintained cover until assisting units arrived at the scene.

Investigators examined Garcia's gun, a nine millimeter Beretta. There was one live round in the chamber and six live rounds in the magazine. Garcia carried his gun with one round in the chamber and 15 rounds in the magazine.

Medical staff advised investigators that Ruiz suffered numerous gunshot wounds: One to the left clavicle, one to the left shoulder, one to the right humerus bone, two to the left thigh, one to the right back area, and one to the right buttocks.

Deputy John Perez told investigators that shortly after he and his partner arrived at Hooper Street and East 58th Drive he heard gunshots to the west of their location. The gunshots sounded as if

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[1] Ruiz was subsequently charged with two felony counts of possession for sale and transportation of a controlled substance in case number VA063403.

they had come from a small caliber handgun. When they began checking the area he saw Ruiz and noticed that he had a startled or scared expression on his face. Both he and Garcia gave several loud commands to Ruiz to stop. Ruiz reached quickly toward his waistband, as if he were drawing or hiding a gun. He then turned and ran into the yard of a business. Garcia stopped the patrol car, but failed to put the transmission into park. Perez, who got out of the passenger side and was running around the front of it in order to chase Ruiz, was struck by the patrol car as it rolled forward. He ran to the driver's side door and tried to put the transmission into park in order to stop its forward movement. Perez was unable to place the transmission into park before the patrol unit crashed into another car. During his attempt to place the transmission into park, he heard gunshots, looked in the direction of the gunshots and saw Garcia taking a position of cover. Ruiz was on the ground, inside the yard of the business, moving about. Garcia yelled out to Perez, "Sir, he turned on me!"

Sergio Ruiz told investigators he found some keys with a tag that advertised the name and address of a business. He recognized the business as a manufacturer of custom rims. Ruiz decided to go to the business to steal some rims. When he entered the business he found a package wrapped in duct tape on the ground. Ruiz said he did not know what was inside the package, but he believed it contained money. He felt the outside of the package and realized it contained some type of narcotic. When the deputies arrived they told him to stop but he ran instead. When he turned around to face one of the deputies he had the duct-taped object in his hands near his waist. He told the investigators that he threw the object to the ground while facing the deputy. He added that after he was shot he was rolling around and moving about while on the ground.

In a subsequent interview, Ruiz told investigators he heard a police officer tell him to "drop the gun." Ruiz said that he told the officer to "Stop shooting, I don't have a gun." Ruiz' criminal record includes [redacted]

Believing that the business at 1212 East 58th Drive might contain evidence of a burglary, deputies entered and found instead evidence of a methamphetamine lab. A van containing chemicals and apparatus to manufacture methamphetamine was parked inside the location. Latent fingerprints were lifted from the van. One print was positively matched to Ruiz' right thumb.

LEGAL SUMMARY AND CONCLUSION

California law permits the use of deadly force in self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense or in the defense of another that he actually and reasonably believed that he was in imminent danger of great bodily injury or death. People v. Williams (1977) 75 Cal. App. 3d 731.

In protecting himself or another, a person may use all force which he believes reasonably

necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions—Criminal (CALJIC) 5.30, 5.32.

Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins (1961) 189 Cal. App. 2d 575.

Actual danger is not necessary to justify the use of deadly force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self-defense is the same whether the danger is real or merely apparent. People v Toledo (1948) 85 Cal. App. 2d 577.

Deputies Perez and Garcia heard gunshots that Perez identified as coming from a small caliber handgun. When they drove in the direction of the gunfire, they saw Ruiz. When Ruiz was told to stop, he crouched down in a "combat position" and put his left hand to his waistband before running away from the deputies. As Garcia pursued Ruiz and ordered him to stop, Ruiz suddenly spun around facing Garcia, holding what according to Garcia appeared to be a gun. Fearing that he was about to be shot, Garcia fired several rounds from his gun at Ruiz. Ruiz himself corroborated much of Garcia's account of the shooting. Ruiz admitted that he was told to stop, and that he was holding an object near his waist area when he was shot. This object, wrapped in duct tape, could easily have been mistaken for a gun.

It is the conclusion of this office that Deputy Garcia's use of deadly force was a lawful act in self-defense. We are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By Hector Guzman

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c: Deputy Noe Garcia #[redacted]